

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 07-00419-01-CR-W-HFS
)	
LUCAS CUNNINGHAM,)	
)	
Defendant.)	

ORDER

Defendant's motion to suppress has been considered, based on the transcript of a hearing, the report and recommendation of Judge Larsen, and the briefing, particularly the objections to the Magistrate's report.

Defendant now argues two issues: (1) the case is controlled by United States v. Hogan, 25 F.3d 690 (8th Cir. 1994), where it was held that a warrant to search a house did not alone justify detention of a defendant who had traveled some miles from the residence, so that seizing his vehicle was unlawful; and (2) the Magistrate Judge erroneously require defendant to produce evidence that an inventory search was not authorized under police department policy.

The Hogan case is not controlling because Hogan was not under arrest when his car was seized, whereas Cunningham was under arrest and there was probable cause for arrest, as outlined by the Magistrate Judge at pages 11 and 12 of his report. Whether the arresting officers had the same rationale as that used by the Magistrate Judge is not relevant, under the case law cited. Essentially the ruling is based on adequate information of defendant's drug possession on the day before the arrest.

The burden of proof issue is also unsound. Although the Magistrate Judge refers to the absence of “evidence” that department policy was not followed, page 13 of the report, it seems the deficiency was in defendant’s argument that inventory policy did not cover the situation at bar. A failure of argument can be asserted without violating burden of proof concepts.

It may also be noted that suppressing the contents of the vehicle may be immaterial, in light of what was obtained under the search warrant from the residence.

For the reasons stated, the report and recommendation are adopted and the motion to suppress is denied. SO ORDERED.

/s/ Howard F. Sachs
HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

October 7, 2008

Kansas City, Missouri